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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/064,363

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Tadashi Takano

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03/27/2006

ERNEST A. BEUTLER, ATTORNEY AT LAW  
10 RUE MARSEILLE  
NEWPORT BEACH, CA 92660

EXAMINER

TAMAI, KARL I

ART UNIT

PAPER NUMBER

2834

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/064,363  
Filing Date: July 07, 2002  
Appellants: TAKANO ET AL.

**MAILED**

MAR 27 2006

**GROUP 2800**

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Ernest Beutler

For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 1/21/2006 appealing from the Office action mailed 8/19/2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 1, 4, and 6 are pending before the Board of Appeals and Interferences, as is shown on page 6 of the Appellant's Appeal Brief and as noted on the final rejection dated 8/19/2005.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

<u>Patent Number</u>	<u>Inventor</u>	<u>Publication Date</u>
5698923	Scherzinger et al.	December 16, 1997
3276275	Ebbert	December 11, 1964

**(9) Grounds of Rejection**

The following grounds of rejection are applicable to the appealed claims:

Claims 1, 4, and 6 are rejected under 35 U.S.C. 102(b) as anticipated by Scherzinger et al. (Scherzinger)(US 5698923) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Scherzinger et al. (Scherzinger)(US 5698923) and Ebbert (US 3276275). Scherzinger teaches a circular core with teeth having enlargements on the end. Scherzinger teaches insulators extending over the teeth and the inner surface of the enlargements, where the portion on the enlargement is thicker than the portion on the leg portions and forming a fixed and open slot clearance between the teeth. It is inherent that the smaller opening provided by the enlargements

32. The examiner notes that the dimensions of the winding needle is a method of making limitation that is not germane to the patentability of the apparatus.

As a product by a process claim “even though the product-by process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of the product does not depend on its method of production. If the product in the product by process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process”. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966(Fed. Cir. 1985). The product by process limitations regarding the winding by a winding needle does not differentiate the Applicant's claimed invention over the prior art because ALL the structural limitations are shown in Scherzinger. It is inherent that the smaller opening provided by the enlargements 32 will provide some degree of protection for the winding from the winding needle because the enlargement will limit the circumferential displacement of a needle inserted into the slots.

In the alternative the Claims 1, 4 and 6 are rejected under 35 U.S.C. 103(a) as obvious over Scherzinger, in further view of Ebbert (US 3276275). Scherzinger teaches every aspect of the invention, as discussed above, except the fixed clearance opening for receiving the winding needle and the opening of the slot insulation being smaller than the diameter of the nozzle. Ebbert suggests the nozzle has a tip larger than the opening of the slot (see figure 1). It would have been obvious to a person of ordinary skill in the art at the time of the invention to construct the armature of Scherzinger with the fixed clearance opening for receiving the winding needle and the opening of the slot insulation being smaller than the diameter of the nozzle to allow for the easy and rapid winding of a stator core, as taught by Ebbert.

**(10) Response to Arguments**

Appellant's argument regarding the filing date of the IDS containing Scherzinger is not persuasive because it is not relevant to the pending claims.

The Board of Appeals and Interferences remanded the application with an affirmance of a rejection of claims 1, 5, and 6 over Uchida and a new rejection of claims 1 and 4 over Scherzinger. The Appellant's amendment dated 7/21/2005 overcame the Uchida rejection, but did not overcome the Scherzinger reference as a statutory bar of claims 1, 4, and 6 under 35 U.S.C. 102(b) as set forth in the Final Rejection dated 8/19/2005, and repeated in the preceding section.

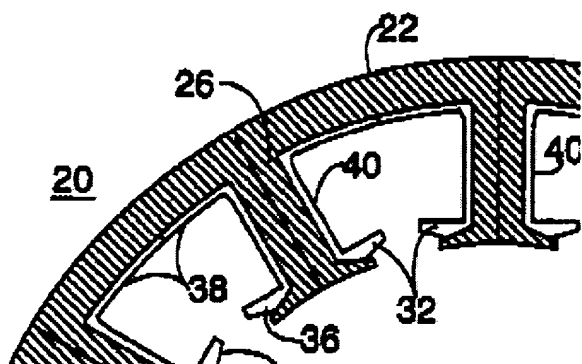
Appellant's argument regarding reference number 38 of Appellants structure is not persuasive because reference number 38 is not claimed. The Appellant's structure that corresponds to reference number 38 are permanent magnets on the rotor, which are not claimed. The reference number 38 in Scherzinger correspond to the circular portion lying on one side (the inside) of the circular core 20. The Appellant's argument that the insulator segment of Scherzinger extends only on one side of the gap between the enlarged teeth is not persuasive. Scherzinger shows that two insulator portions 32 extend from the enlarged portion 36 to enlarged portion 36 of adjacent teeth.

Appellant's argument regarding how the teeth are wound is not persuasive because it is a method of making limitation that is not germane to the patentability of the apparatus. Scherzinger teaches that coils or wires are wound around the insulation on the stator poles (col. 1, lines 18-20). Appellant's argument regarding the facing

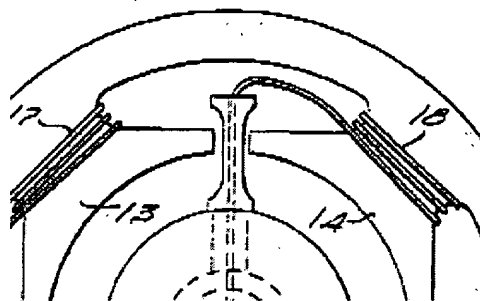
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extension forming a gap is not persuasive because the limitation is shown in Scherzinger between the extensions 36.

Appellant's argument regarding the limitation of claim 6 shown in figures 19 and 20 is not persuasive. Scherzinger shows in figure 3, a slot open clearance that can accommodate the winding tip of a winding machine, but the dimension of the winding machine is not germane to the armature apparatus of claims 1 and 6, therefore limitation is statutorially barred by Scherzinger. The examiner provided Ebbert showing the winding machines having a neck fitting between the pole teeth 13, 14 and expanding out to a tip which is larger than the opening between the poles teeth. In combination with Scherzinger this suggests an open clearance slot smaller than the diameter of the tip of the winding machine to allow a fast and reliable winding of the poles, as literally taught by Ebbert (col. 1, lines 15-20). The rejection is proper and should be maintained.



Scherzinger (Figure 3)



Ebbert (Figure 1)

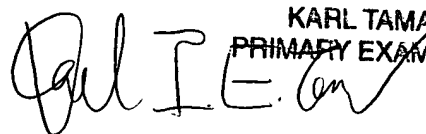
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**(11) Related Proceedings Appendix**

Copies of the Board of Appeals and Interferences decision dated 5/31/2005 is provided by the Appellant after the appendix of the Appeal Brief.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

  
KARL TAMAI  
PRIMARY EXAMINER

Karl I.E. Tamai

Primary Examiner, AU 2834

Conferees: 3/21/06

Karl Tamai (Primary Examiner, AU 2834) 

Darren Schuberg (Supervisory Patent Examiner, AU 2834) 

Drew Dunn (Supervisory Patent Examiner, AU 2872) 